

**Written Testimony of Tracy Velázquez**  
**To the Law and Justice Interim Committee**

**64<sup>th</sup> Montana Legislature**

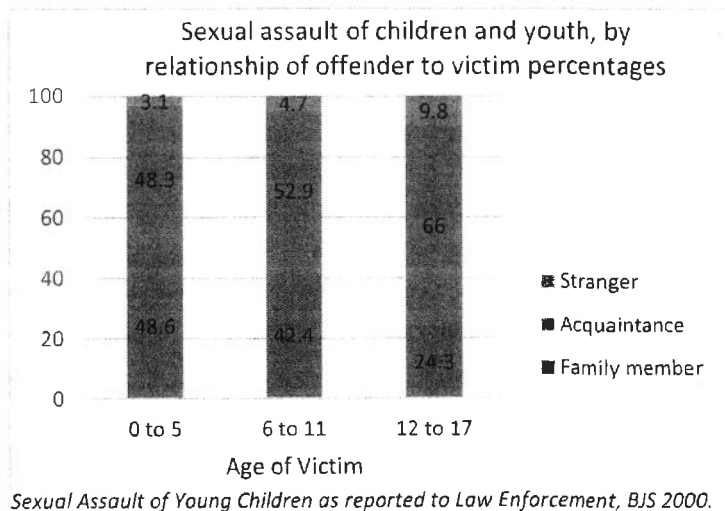
**April 21, 2016**

Chairman Sales, Vice-Chair Sands, and Members of the Committee:

My name is Tracy Velázquez. I was a longtime Montana resident and am currently the Associate Director of the Justice Programs Office at American University in Washington, DC. However, this testimony is provided by me as an individual, and my views do not necessarily represent those of American University.

Thank you for the opportunity to present this testimony regarding the issue of sex offense policies. When I moved from Montana in 2008 to work for the Vera Institute of Justice, I was assigned to finish – start actually – a report that a prior staff person had gotten a grant for right before he left Vera for a new job. It was on a topic that I knew nothing about – sex offender policies in the United States. While I realized that, as the “newbie,” I’d been saddled with a task no one else wanted, I quickly became engrossed in the topic. While there are many laws passed in the U.S. without regard to whether they will be successful in achieving their stated goal, what I found in my research on sex offenses was that they were exceptional in their being driven primarily by emotional responses to a handful of heinous crimes, with little regard for any evidence of efficacy in terms of reducing victimization. I titled the report, “The Pursuit of Safety,” because that’s what these policies felt like: a quest to keep people – and particularly children – safe from violent predators who seemed (partly because of the explosion of the 24/7 news cycle) like they could be around any corner.

As others who are able to be there in person may tell you, current sex offender policies appear to have little deterrent effect on reducing sexual offending. This is partly because so many cases go unreported, and because our laws focus primarily on “stranger danger.” While the prospect of someone snatching a child is terrifying – I recall losing sight of my daughter for just a moment at a highway rest stop once when she was younger, and the terror I felt in that moment is not something you forget – it is a small fraction of all offenses. As the graph I’ve included here shows, the sad reality is that most children who are sexually assaulted are victimized by the very people who should be protecting them: family members and acquaintances. That



the figures in the graph are for assaults *reported to law enforcement* likely means that the percent of offenders that are family members is likely underestimated.

What also surprised me as I did my research was that not only did the policies that have passed over the last three decades not been particularly effective at reducing victimization, they have also in a number of cases reduced public safety by making it almost impossible for someone who was convicted of a sex offense to be successful upon reentry. I noted that on your agenda is the report of the multi-agency Reentry Taskforce. Around the country, successful reentry means people returning from prison can get a job, have a place to live, further their education and get treatment for behavioral health issues. All these things are almost impossible for a person convicted of a sex offense to attain upon their return. Public housing has restrictions; private landlords won't rent and employers won't hire someone on the registry as it will identify their apartment and business locations; colleges can deny admission; and even treatment programs can be denied to sex offenders.

In addition, in some states, victim groups have argued against punitive sex offender policies as it may keep people from reporting on offending loved ones. And right now there is no way for someone to get treatment without bearing the full weight of a lifetime of punishment and stigma; this may in fact prolong offending behavior, increase victimization, and delay healing.

I noted that one of the prepared bill drafts would address what's often known as "Romeo and Juliet" cases, where two teenagers, one of whom is 18, engage in sex that does not involve force. This seems like a move in the right direction. Holding young adults accountable while allowing them a second chance (by not making them register) will benefit them and the community.

As you know best, making public policy is a process of incremental adjustments. Montana's interim committee system, with its study bills, allows legislators like yourselves to look at complex issues, examine data and evidence, and weigh choices. I urge you to continue to refine sex offense policies so that expensive prison time is not used unnecessarily on low-risk offenders and other alternatives are created that hold people accountable and reduce reoffending; so that post-incarceration policies don't reduce public safety rather than increase it; so that people who are capable of rehabilitation are provided treatment and services so that they can become law-abiding, taxpaying citizens; and so that victims – even those who choose not to identify the person who harmed them – get the full range of services they need.

As I concluded in my report, "the next challenge will be to go upstream ... [and] discover precursors to offending behavior and create appropriate interventions. These, in the end, may be the most successful at reducing sex offense rates." I am sure that anyone sexually victimized would say that prevention of harm should be one of the top goals of good public safety policy. Thank you, and I would be happy to assist the committee in whatever way it finds useful and productive in the future.

*Attachment: "The Pursuit of Safety: Responses to Sex Offender Policies in the U.S.," summary of two reports. Full report, "The Pursuit of Safety" is available at <http://www.vera.org/pubs/pursuit-safety-sex-offender-policy-united-states-0>*

# The Pursuit of Safety:

## Responses to Sex Offenders in the U.S.

Tracy Velázquez • Reagan Daly

REPORT SUMMARY • JULY 2009

*In 2008, the Vera Institute of Justice produced two survey reports for the U.S. Justice Department's Bureau of Justice Assistance. The first, The Pursuit of Safety: Sex Offender Policy in the U.S., reviewed federal and state laws concerning sex offenders and the impact of these laws. The second, Treatment and Reentry Practices for Sex Offenders: An Overview of States, analyzed programs for sex offenders in 37 states. Together, the reports provide a look at national trends in responses to sex offenders. This summary highlights their findings.*

### WHY LOOK AT SEX OFFENDER POLICIES?

Over the past two decades, in response to several highly publicized violent sexual crimes against children, federal and state policymakers have passed laws intended to protect the public from sexual predators. These laws, which have attracted substantial bipartisan support, lengthen prison sentences for sex offenders and establish strategies for managing them after

release. Some of the laws also keep those who are deemed particularly dangerous institutionalized after they have served their sentences. Still others have expanded the scope of crimes that qualify as sex offenses, greatly increasing the number of people affected by policies targeting sex offenders.

The effectiveness of these responses must be measured in terms of reduced rates of sexual offending. Yet, while there have been recent reductions in these rates, it is unclear whether these are due to the new laws. In large part, this is because most of these policies are aimed at curbing predation by strangers, even though sex offenses are more often committed by family members and others known to the victim. The Bureau of Justice Statistics reports, for example, that more than 90 percent of sex offenses against juveniles are committed by family members and acquaintances.

The specific influence of these laws may also be obscured by the overall decrease in crime rates over the past 20 years. There is even reason to believe, in some cases, that the new policies may have had negative impacts on public safety.

### Key Findings

- > Policies vary widely in their ability to protect the public, and particularly children, from sexual victimization. Most focus on preventing repeat offenses by strangers, a relatively rare event compared with sex offenses by people known to the victim and the victim's family.
- > Some sex offender policies can have an unintended negative impact on public safety. By making it harder for offenders to find shelter, employment, and social supports, these policies drive some offenders out of contact with authorities.
- > More research is needed on how to prevent sex offenses and maximize public safety through more effective policies.

### WHO IS A SEX OFFENDER?

The definition of a sex offender is broad and encompasses different types of offenses. A sex offender is a person who has been convicted of a crime that requires registration at the federal or state level. Under federal guidelines, people convicted of sexual abuse, aggravated sexual abuse, and a number of crimes involving a minor, such as kidnapping, must register with authorities. Some states have extended the list of crimes to include offenses such as voyeurism, public exposure, and adultery. Because the definition has expanded to include so many different kinds of crimes, it is difficult to create a coherent policy for this population.

Are communities safer because of laws that keep convicted offenders in prison longer and closely monitor them once they are released? Implementing sex offender laws and policies is costly: Is this money well spent? Policymakers charged with using public funds to maximize public safety outcomes need information on what works to deter would-be sex offenders, reduce recidivism, and identify and incapacitate the most dangerous people. To better understand the impact of sex offender laws, Vera staff reviewed current federal and state legislation and available research on this topic. This analysis identified the following six policy areas that represent the bulk of recent legislation.

**1. SENTENCING:** By establishing long prison terms for people convicted of sex crimes, society sends a message that people who commit these crimes will face serious consequences. Vera's analysis of current sex offender laws shows that sex offenders are being incarcerated longer and for a wider range of crimes, often without the option of parole or early release. There has been a drop in violent crime nationwide over the past 20 years—including a drop in the incidence of rape—but the influence these laws have had is unclear because many of the tougher sentencing laws were passed after crime rates had fallen or begun to level off.

In addition, some victim advocacy groups have questioned whether longer mandatory minimum sentences (which, in some cases, require judges to send people to prison for decades) may reduce crime reporting and increase plea bargaining. Someone victimized by a relative or ex-spouse, for example, may not want to see that person put behind bars for many years,

especially if the person is supporting a family. In 2008, a statewide coalition of community-based rape crisis programs in Connecticut opposed three-strikes legislation for sex offenders (laws that impose mandatory prison sentences for people who are convicted three times) on the grounds that it might discourage crime reporting. The National Alliance to End Sexual Violence has taken a similar position. Finally, although longer sentences keep sex offenders incapacitated while in custody, research suggests they do not reduce re-offending once the person is released. The high cost of long-term incarceration must be weighed against the relatively minor impact of those long sentences on re-offending.

**2. REGISTRATION REQUIREMENTS:** Requiring convicted sex offenders to register with authorities helps law enforcement keep track of people who pose a risk to public safety. All 50 states now maintain computerized sex offender registries that connect to a federal registry of information on offenders. New federal guidelines broaden the range of offenses for which an offender must register to include, for example, any crime that is considered sexually motivated. They also require offenders to report changes in employment or residence within three days. However, rates of compliance with registration are falling, and many states lack the resources to track down those who fail to comply. Although registries have been shown to have a modest impact on re-offending among those who know their victims, they appear ineffective in deterring crimes by strangers.

**3. COMMUNITY NOTIFICATION:** The drive for community notification laws began in New Jersey in 1994, after seven-year-old Megan Kanka was

raped and murdered by a neighbor with a record of sexual crimes. Her parents, who had no knowledge of their neighbor's past, demanded that residents be given information about sex offenders who live near them. New Jersey passed its sex-offender notification law, known as "Megan's Law," the same year; a federal version of the law passed in 1996. Community notification—using e-mail alerts, web site listings, community meetings, flyers, and in some states, door-to-door visits by offenders—makes some people feel more informed and secure. Many people say that when notified that an offender is moving into their neighborhood, they take action to keep their families safe. However, evidence is mixed on whether notification is effective in reducing sex offenses because a majority of sex offenders are known to their victims.

Community notification policies have drawbacks, too. Administering these systems can be a burden for law enforcement and parole officers. In addition, notification has a destabilizing effect on offenders, reducing the likelihood of their attaining housing or a job. This drives offenders underground, pushing them further from the services they need and putting public safety at risk. Finally, in some cases notification has resulted in violence and acts of vigilantism against offenders.

**4. RESIDENCY RESTRICTIONS:** At both the state and municipal levels, the number and scope of policies that limit where registered sex offenders can live has grown tremendously. These policies are designed to keep sex offenders from living close to places where children congregate, such as schools and playgrounds. However, restrictions can specify such large areas that it can be hard for offenders to find

housing at all (see map). Also, studies show that residency restrictions do not prevent re-offending. Rather, they reduce public safety by destabilizing and stigmatizing offenders, often driving them out of contact with support systems and law enforcement.

**5. ELECTRONIC MONITORING:** A growing number of states are using technology to track sex offenders. Offenders tracked by electronic monitoring (EM), for example, are outfitted with a radio transmitter worn on the ankle. Passive EM keeps records of offenders' whereabouts to examine later. Active EM provides signals in real time via geographic positioning system (GPS) technology. Although expensive, EM holds some promise for reducing reliance on incarceration and improving supervision. A few studies have shown decreased recidivism, but others showed no significant decrease in rearrests. This may be due to problems in implementing new technology. In addition, some reports indicate that offenders—especially those who have been law abiding—resist wearing the device, which can be conspicuous. In some urban areas, buildings and subways interfere with the real-time GPS system, making tracking unreliable.

**6. CIVIL COMMITMENT:** Faced with releasing people considered too dangerous to be safely managed in the community, some policymakers have enacted civil commitment laws. These laws authorize states to detain people convicted of violent sexual offenses beyond the end of their sentences, provided they have a mental condition that makes re-offending likely. The risk assessment process used to identify these people, however, is not always administered or interpreted by qualified medical personnel. Few civilly committed offenders have ever

been returned to the community. Civil commitment is expensive because it is only constitutional if treatment is provided. Because of concerns about due process, civil commitment has generated opposition from groups such as the American Psychiatric Association and has faced legal challenges. For these reasons, expansion of civil commitment into new states may be slowing. Granting judges more flexibility in sentencing for the most dangerous offenders, as well as advances in treatment and monitoring, may improve society's ability to manage high-risk offenders in other ways.

### MOVING TOWARD A SAFER FUTURE

In passing sex offender laws, policymakers are doing their best to protect society—particularly its most vulnerable members, children. Yet many of these laws have been enacted without the benefit of evidence about which approaches work best. Some of the sex offender laws on the books today were passed in the 1980s and 1990s. With the benefit of 10 or more years' hindsight, there is an opportunity now to evaluate objectively how well they have achieved their goals.

Many sex offender laws also carry significant costs for local and state government in the form of added prison beds and staff time for parole, probation, and law enforcement officers. Any analysis, in addition to assessing their effectiveness in deterring crime, should consider whether these laws are an efficient use of public funds.

Additionally, researchers should consider whether long periods of incarceration and close monitoring of offenders come at the expense of alternatives that might yield better

### Residency Restrictions in San Francisco, California



*This map of San Francisco shows where sex offenders may not live (shaded in gray).*

Source: California Senate Demographics Department

outcomes. Should, for example, more resources focus on preventing sex offenses, intervening when abuse is ongoing, or providing public education?

Finally, some laws aimed at reducing sex offenses do not target the most common sex offenses—those perpetrated by people known to the victim. Laws designed to keep people safe from sex offenders may also have unintended negative consequences—residency restrictions that lead to released offenders becoming homeless and losing touch with authorities, for example. These potential downsides need to be considered as well.

In designing consequences for sex offenders, policymakers need to strike a balance between protecting public safety and dealing with the rising costs of keeping more people incarcerated for long periods of time. To get the best public safety outcomes, they must devote resources to stopping the most serious offenders from harming people and also work to rehabilitate those who present less risk.



## TREATMENT AND REENTRY PRACTICES FOR SEX OFFENDERS

In a companion study, *Treatment and Reentry Practices for Sex Offenders*, researchers found that the trend toward longer periods of incarceration for sex offenders, in combination with expanding definitions of sex offenses, has driven up criminal justice costs, leading some states to reconsider their approach. With an eye toward cost savings, many states have begun treatment programs for sex offenders both in prison and in the community. The hope is that these programs will reduce re-offending and improve public safety. However, there are few resources available to policymakers who are trying to expand these efforts. Vera staff analyzed current programs for sex offenders in 37 participating states, based on interviews with officials and treatment providers and a review of existing research. We focused on treatment; reentry programs, which serve formerly incarcerated people as they rejoin their communities; and community supervision (parole and probation).

### TREATMENT PROGRAMS

Treatment of sex offenders is generally grounded in evidence-based practices, especially cognitive-behavioral therapy (CBT), which relies on changing thought processes to help people understand and accept responsibility for their offenses. Despite the difficulty in assessing the impact of sex offender treatment programs (see box, top right),

#### Research Limitations

It is hard for researchers to determine the impact that sex offender programs have because unknown numbers of sex offenses go unreported, and arrest rates for these crimes are low. Researchers also face challenges in finding comparison groups, which they need to verify a program's effectiveness. For example, in some programs, participants volunteer for treatment programs and others refuse. When researchers compare these groups, it is difficult to determine whether results are due to the program or participants' motivation to receive treatment

### For More Information...

For more information about sex offender policies, contact Peggy McGarry at (212) 376-3131 or [pmcgarry@vera.org](mailto:pmcgarry@vera.org). For information about research on sex offender treatment, contact Reagan Daly at (212) 376-5206 or [rdaly@vera.org](mailto:rdaly@vera.org).

For more information about Vera's Center on Sentencing and Corrections, contact Peggy McGarry at (212) 376-3131 or [pmcgarry@vera.org](mailto:pmcgarry@vera.org).

These reports are available on Vera's web site at [www.vera.org](http://www.vera.org).

research has consistently found that CBT is an effective approach to reducing sexual re-offending and re-offending in general. Eighty-one percent of the states we surveyed reported that CBT is available in institutional settings. The proportion of imprisoned sex offenders in treatment at any given time ranges widely across states, from nearly none to one-third. Access to jail- and prison-based programs is often limited by the number of treatment beds available, however. For people who are under community supervision, CBT is available in 85 percent of the states we surveyed. However, in most of those, participation in community treatment may depend on ability to pay, which limits access to these programs.

### REENTRY AND COMMUNITY SUPERVISION

Research on reentry and supervision practices has uncovered two salient findings: (1) social support is key to making a successful transition back to society, and (2) supervision is most effective when combined with specialized treatment. Although sex offenders are eligible for general reentry programming in most of the states surveyed, only Vermont has an initiative that specifically targets them. However, in two-thirds of the states we surveyed, correctional institutions and community supervision agencies share information about case histories and treatment plans. Research suggests that such interagency communication can help reduce recidivism.

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